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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H 2007 705

DEBORAH MARGARET LEE
137 Myrtle Street
Bakersfield, CA 93304

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about December 21, 2007, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a respiratory care practitioner license from Deborah Margaret Lee (Respondent). On or about December 7, 2007, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on April 18, 2008.

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3732 of the Code states:

8 “(a) The board shall investigate each and every applicant for a license,
9 before a license is issued, in order to determine whether or not the applicant
10 has in fact the qualifications required by this chapter.”

11 “(b) The board may deny an application, or may order the issuance of a
12 license with terms and conditions, for any of the causes specified in this chapter for
13 suspension or revocation of a license, including, but not limited to, those causes specified
14 in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

15 7. Section 3750 of the Code states:

16 “The board may order the denial, suspension or revocation of, or the imposition of
17 probationary conditions upon, a license issued under this chapter, for any of the following
18 causes:

19 “(d) Conviction of a crime that substantially relates to the qualifications,
20 functions, or duties of a respiratory care practitioner. The record of conviction or a
21 certified copy thereof shall be conclusive evidence of the conviction.”

22 “(g) Conviction of a violation of any of the provisions of this chapter or of any
23 provision of Division 2 (commencing with Section 500), or violating, or attempting to
24 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
25 violate any provision or term of this chapter or of any provision of Division 2
26 (commencing with Section 500).”

27 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
28 substantially related to the qualifications, functions, or duties of a respiratory care

1 practitioner.”

2 8. Section 3752 of the Code states:

3 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
4 made to a charge of any offense which substantially relates to the qualifications,
5 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
6 the meaning of this article. The board shall order the license suspended or revoked, or
7 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
8 conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section
10 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
11 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
12 accusation, information, or indictment.”

13 9. California Code of Regulations, title 16, section 1399.370, states:

14 “For the purposes of denial, suspension, or revocation of a license, a crime or act
15 shall be considered to be substantially related to the qualifications, functions or duties of
16 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
17 perform the functions authorized by his or her license or in a manner inconsistent with the
18 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
19 those involving the following:

20 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
21 abetting the violation of or conspiring to violate any provision or term of the Act.

22 “(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.”

23 COST RECOVERY

24 10. Section 3753.5, subdivision (a) of the Code states:

25 "In any order issued in resolution of a disciplinary proceeding before the board,
26 the board or the administrative law judge may direct any practitioner or applicant found to have
27 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
28 investigation and prosecution of the case."

1 11. Section 3753.7 of the Code states:

2 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
3 include attorney general or other prosecuting attorney fees, expert witness fees, and other
4 administrative, filing, and service fees."

5 12. Section 3753.1 of the Code states:

6 "(a) An administrative disciplinary decision imposing terms of probation may
7 include, among other things, a requirement that the licensee-probationer pay the monetary costs
8 associated with monitoring the probation. "

9 FIRST CAUSE FOR DENIAL OF APPLICATION

10 (Substantially-related Conviction)

11 13. Respondent's application is subject to denial under code sections 3750(d),
12 3750(g), and 3752 [substantially related conviction] in that she was convicted of violating Penal
13 Code section 508, embezzlement by employee. The circumstances are as follows:

14 14. On or about May 15, 2007, respondent was working as a salesclerk at
15 Gottschalks Department store in Bakersfield, California. On that date, at about 9:00 p.m., Loss
16 Prevention Agent A.O. observed respondent cut the price tags off a ring and bracelet. Each item
17 was priced at \$22.00 for a total value of \$44.00. Respondent took them for her personal use,
18 without paying for the two items.

19 15. Agent A.O. notified respondent's supervisor of the theft. Respondent was
20 on vacation from May 16, 2007 through May 28, 2007. When respondent returned to work at
21 Gottschalks on May 29, 2007, Agent A.O. placed her under citizen's arrest. Bakersfield Police
22 Officers Robert Pair and Chad Haskins investigated, and issued a summons and citation to
23 respondent for embezzlement, a violation of Penal Code section 508.

24 16. On or about June 14, 2007, a citation was filed. On or about July 30,
25 2007, an agreement to appear was filed and a misdemeanor arraignment set for July 30, 2007 in
26 Superior Court, Metropolitan Justice Building. On July 30, 2007, respondent entered a plea of
27 not guilty to Count 1, a misdemeanor violation of Penal Code section 508, embezzlement.

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1 17. On or about August 24, 2007, Respondent was convicted on her plea of
2 nolo contendere to Count 1, Penal Code section 508. She was found guilty by the Court, and the
3 count was dismissed upon the condition that her plea remain in effect.

4 18. On or about August 24, 2007, Respondent was sentenced as follows: three
5 years court probation with terms and conditions which included payment of fines and she was
6 ordered to obey all laws. A hearing on conditional dismissal is set for August 26, 2008 in
7 Superior Court, Metropolitan Justice Building.

8 19. Therefore, respondent's license application is subject to denial based on
9 her conviction of violating Penal Code section 508, embezzlement by employee, which is
10 substantially related to the practice of respiratory care.

11 SECOND CAUSE FOR DENIAL OF APPLICATION

12 (Dishonest Act)

13 20. Paragraphs 13 through 17 are incorporated herein.

14 21. Respondent's act of stealing property from her employer is a dishonest act,
15 and grounds for denial of her application for licensure pursuant to code section 3750(j).

16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein
18 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

19 1. Denying the application of Deborah Margaret Lee for a respiratory care
20 practitioner license;

21 2. Directing Deborah Margaret Lee to pay the Respiratory Care Board of
22 California the costs of the investigation and enforcement of this case, and if placed on probation,
23 the costs of probation monitoring;

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1 3. Taking such other and further action as deemed necessary and proper.

2 DATED: July 15, 2008

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Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant